Supreme Court, U.S.
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No. 04-1641

In the Supreme Court of the United States

STAINLESS SYSTEMS INCORPORATED,
Petitioner,

v.

NEXTEL WEST CORP., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY BRIEF

CHARLES D. CHALMERS
Counsel of Record

20 SUNNYSIDE AVENUE
SUITE A#199
MILL VALLEY, CA 94941-1928
(415) 860-8134

Counsel for Petitioner

Becker Gallagher Legal Publishing, Inc. 800.890.5001

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PETITIONER'S REPLY

There are two points which petitioner believes should be brought to the Court's attention. The first responds to Respondents' argument that *Devlin* is not properly cited by petitioner on the standing issue. The second is suggested by their statement that *Devlin* is distinguishable because it involved a non-opt-out class while the present case was certified as an opt-out class.

At least one Court of Appeal has stated that *Devlin* stands for the proposition that a class member has "standing" to appeal. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir. 2005). As petitioner does here, the court in *In re Rite Aid* relied on Rule 23(e)(1)(A), which allows a class member to object to a settlement.

The Eighth Circuit has, in dicta, questioned whether *Devlin's* holding that a class member has the right to appeal the approval of a settlement applies to opt-out class action settlements. *In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 302 F.3d 799, 800 (8th Cir.2002)(relying on an Arkansas Supreme Court holding to that effect; *Ballard v. Advance America*, 349 Ark. 726, 80 S.W.3d 374 (2002). It has also strongly implied in a holding that *Devlin* does not apply when a class member has the right to opt-out. *Snell v. Allianz Life Ins. Co. of N. Am.*, 327 F.3d 665, 670 n. 2 (8th Cir. 2003). The Ninth Circuit has held that *Devlin* does apply to permit an objector to appeal in opt-out class settlements. *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 572 (9th Cir. 2004)

The Eighth Circuit's holding that petitioner could not challenge the settlement due to a lack of standing is clear, if cryptic. It would be desirable, perhaps, to have some

explanation for the basis of this dramatic departure from the existing authority on the standing of class members to object to a settlement. Respondents suggest that it is related to the distinction between an opt-out and a non-opt-out class action settlement.

Respectfully submitted,

Charles D. Chalmers, Esq.
20 Sunnyside Avenue
Suite A #199
Mill Valley, CA 94941-1928